August 22, 2018

VIA ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment WT Docket No. 17-79**
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment WC Docket No. 17-84

Dear Ms. Dortch,

Uniti Fiber submits this letter in the above-referenced dockets to address certain barriers that the company has faced that delay and prevent efficient and timely broadband deployment. Specifically, Uniti Fiber continues to see significant and increasing government-imposed costs and other measures associated with the deployment of fiber and small cell facilities. The company urges the Commission to use its preemptive authority to ensure that fees paid to governmental entities necessary for the deployment of broadband infrastructure are reasonable, cost-based, and non-discriminatory. Likewise, it urges the Commission to address other locally-imposed obstacles that delay and prevent broadband deployment.

Uniti Fiber is a facilities based competitive network provider. The company deploys cell site back-haul and small cell solutions for the nation's largest wireless carriers, as well as "wired" data transport, Internet access, and other network solutions. The company currently operates 1.5 million fiber strand miles connecting over 16,000 customers across dozens of states. In addition to serving small businesses, enterprises, and residential customers, we also serve local governments, federal agencies, charities, and first responders. The company is also a leader in the E-Rate program, and connects hundreds of schools and libraries in many rural and remote locations primarily throughout the Gulf Coast region. A look at Uniti Fiber's network map (available at https://uniti.com/network?map=fiber) quickly demonstrates the breadth of our network. While we deploy in urban and suburban markets, we also serve many rural and hard to reach areas, many in areas that other providers cannot, or will not serve with high-capacity broadband services.

Through Kelly McGriff, Uniti Fiber has been an active and engaged member of the FCC's Broadband Deployment Advisory Committee ("BDAC"). Since the inception of the BDAC in January 2017, Mr. McGriff has been the Chair of the BDAC's State Model Code Committee working group ("SMCC"). For the better part of two years, he has spent significant time and effort working with the other members of the SMCC as well as various outside stakeholders to systematize various obstacles to broadband

deployment, and draft a "State Model Code"[1] that aims to lean on the learned industry experiences to provide a model document aimed at removing and reducing barriers to infrastructure deployment. With respect to his role at Uniti Fiber, Mr. McGriff spends a significant amount of his time working with municipal and county leaders on local franchising and permitting matters---thus, he comes to the BDAC with a wealth of professional experience in this area.

The State Model Code is arranged in a way that allows it to be split into component parts, allowing state lawmakers and other governmental stakeholders to utilize those specific portions that are workable in their own jurisdiction. We draw your attention specifically to Article 9 of that code (see Attachment 1 hereto). That Article in particular is aimed at the promotion of communications network facilities deployment, and provides states and other governing bodies with a reasonable framework that can be used to reducing and/or remove inefficient and wasteful barriers to broadband deployment within their jurisdictions.

Throughout the many months that the SMCC was in the process of developing this framework, Uniti Fiber continued to experience a wide range of issues with local government entities that speak directly to the issues raised in Article 9. Specifically, the company has been subject to:

1) Excessive delays and long timeframes (and in many cases, outright moratoria) with respect to permit processing—many months-long delays outside "moratoria" are not uncommon;
2) Requests for information in the permitting process that far exceed the reasonable safety and zoning interests of the jurisdiction (*i.e.*, jurisdictions use information requests during the permitting process simply to slow it down);
3) Instances where Uniti Fiber has been forced to pay for third party governmental permitting consultants to do the work of local permitting authorities because the responsible agencies are incapable of managing those processes for one reason or another;
4) Requests by governmental authorities for proof that the requested infrastructure deployment is really necessary;
5) Requests that the company seek deployment routes through private lands (or privately-owned poles) before requesting access to public rights of way or government-owned poles;
6) Mandates that all newly deployed infrastructure be placed underground;
7) Demands for in-kind payments (*i.e.*, free fiber) as a condition to the grant of a local franchise or other permit approval;
8) Excessive assurance conditions in lieu of typical bond and insurance requirements, some localities, for example, have started to require deployers to post sizable letters of credit with local banks, which, in effect, ties up capital that could otherwise be put to further deployment; and
9) Excessive fees that bear no relation to the cost the governmental entity incurs with respect to the management of the rights of way within its jurisdiction, or an insistence of imposing a fee structure that clearly forces new entrants to subsidize existing utility or municipal right of way uses.

[1] *See* Broadband Deployment Advisory Committee, State Model Code for Accelerating Broadband Infrastructure Deployment and Investment ("State Model Code"), presented at April 25, 2018 BDAC meeting, available at:https://www.fcc.gov/sites/default/files/bdac-model-code-for-states-04242018.pdf

Each of these examples is a government-imposed restraint on broadband infrastructure deployment. And in many cases, they are contagious: once one local government entity seeks to employ one (or more) of these approaches, they quickly start to appear in other jurisdictions as well, often hundreds or even thousands of miles away. For example, when one local government seeks to impose "market-based rates" for collocation of small cell equipment on municipal-owned poles, other jurisdictions quickly take notice and seek to impose those same rates, regardless of the individual characteristics of the two localities. To put it another way, even if "market-based rates" were the proper measure for establishing a government-established fee schedule (which they are not), the rates imposed in Cupertino or San Jose should bear little resemblance to the rates established in a small bedroom community or even a Tier 2 or 3 metropolitan area.

It is past time for the Commission to take a hard look at these issues, and to develop rules that address unreasonable government-imposed delays on the deployment of broadband infrastructure. The digital divide will never be closed in this country if competitive fiber and other broadband providers are stymied by the governments serving the very customers that need access the most. Local governments should not be allowed to subsidize their operations off the backs of broadband deployment. And in cases where these deployment costs are borne by companies that receive funding through universal service or other similar mechanisms, allowing these types of activities to continue is tantamount to allowing local governments to siphon off those critical support funds to the detriment of all US telecommunications consumers.

Uniti Fiber encourages the Commission to promulgate an Order which embraces the provisions of Article 9 as drafted by the SMCC. Article 9 was drafted to address the unique needs and considerations associated with the siting of wireless facilities and is drawn substantially from roughly a dozen state laws passed over the last few years aimed at modernizing the siting process for wireless facilities. Some specific provisions that we feel are worth specific mention are as follows:

- **Application and Recurring Fee Provisions**. Uniti Fiber avers that municipalities should be able to recover their actual, direct, and reasonable costs associated with the management of rights of way within their jurisdiction. The fee language in the Article 9 version adopted by the BDAC at the April 2018, meeting is based on a review of various fees charged by localities across the country. We believe it finds an appropriate middle ground that enables appropriate cost-recovery by localities without inhibiting wireless broadband deployment. Although states like Rhode Island and North Carolina have adopted more open-ended language on this issue, the majority of states that have recently enacted siting laws have chosen to adopt reasonable, specifically delineated limits (*see, e.g.,* Arizona, Delaware, Florida, Illinois, Iowa, Minnesota, North Carolina, Ohio, Rhode Island, Tennessee, Texas, Utah, and Virginia). See the chart below for a summary of such fee limits. In our experience, these bright-line fee limits have resulted in far fewer disputes between applicants and localities which unnecessarily consume scarce resources and deter investment in expanded or improved broadband service. Thus, Uniti Fiber believes Article 9 as promulgated by the SMCC strikes the appropriate balance between enabling localities to recover the costs associated with their review of applications and

management of the rights-of-way, while, at the same time, ensuring that broadband deployment is not prohibited or effectively prohibited by the imposition of unlimited, unreasonable fees and charges.

Table 1: Review of State Legislation Imposed Small Cell Fee Limitations

State	Statute/Bill	Fee Limit(s) Per Permit Application	Annual Recurring Fee Limit(s) Per Small Cell Location
Arizona	HB 2365[2]	• $750 for new pole applications (§9-592(L)) • $100 per small cell permit up to 5 applications, then $50 for each subsequent application over 5 ((§9-593(J))	• $50 per small cell facility in the ROW (§9-592(D)(4)) • $50 per small cell facility collocated on an authority-owned pole (§9-595(B))
Delaware	HB 189[3]	• $100 for each small cell facility on a permit application (§1605)	• $0 (§1605)
Florida	Fl. Stat. § 337.401[4]	• N/A (not applicable, left unaddressed, or addressed with no specific monetary limit)	• $150 per collocation on an authority-owned pole. (§ 337.401(7)(f)(3))
Illinois	Public Act 100-0585[5]	• Application fee of up to $650 for small cell pole collocation and up to $350 for each additional small cell. (§ 15(e)(1)) • Application fee of $1000 for each small cell facility addressed in an application that included the installation of a new utility for such collocation. (§ 15(e)(2))	• $200 recurring fee per small cell colocation on authority-owned pole in the ROW. (§ 15(i)(3))
Iowa	SF 431[6]	• Limit of $500 for all fees for each permit application addressing no more than five small cells, and an	• N/A (not applicable, left unaddressed, or addressed with no specific monetary

[2] *See* Arizona House Bill 2365 (Mar. 31, 2017), available at: https://www.azleg.gov/legtext/53leg/1R/laws/0124.pdf.

[3] *See* Delaware House Bill 189 (August 31, 2017), available at: https://legis.delaware.gov/BillDetail?LegislationId=25823.

[4] *See* Florida Stat. § 337.401, available at: http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0300-0399/0337/0337.html.

[5] *See* Illinois Public Act 100-0585 (Apr. 12, 2018), available at: http://www.ilga.gov/legislation/publicacts/100/PDF/100-0585.pdf.

[6] *See* Iowa Senate File 431 (May 9, 2017), available at https://www.legis.iowa.gov/docs/publications/LGE/87/SF431.pdf.

		additional $50 for each additional small cell (§3.3.c.(1))	limit)
Minnesota	Minn. Stat. 237.163[7]	• N/A (not applicable, left unaddressed, or addressed with no specific monetary limit)	• $150 per year for rent to collocate on authority-owned pole, $25 per year for maintenance of pole. (Minn. Stat. § 237.163 sub. 6(g)**).**
North Carolina	SL 2017-159[8]	• $100 permit application fee per small cell facility for up to 5 facilities, $50 per small cell application for each additional. (§ 160A-400.54(e))**.** • $500 technical consulting fee for each application. (§ 160A-400.54(f))**.**	• $50 per year collocation rate per pole for authority-owned poles. (§ 160A-400.56(a))**.**
Ohio	S.B. 331[9]	• $250 per facility for each application for placement of a small cell facility. (§ 4939.0319).	• N/A (not applicable, left unaddressed, or addressed with no specific monetary limit)
Rhode Island	H5224[10]	• N/A (not applicable, left unaddressed, or addressed with no specific monetary limit)	• $150 per year for collocation on authority-owned poles. (§ 39-32-5)
Tennessee	HB2279[11]	• $100 each small cell facility for the first five small cells in an application, and $50 for each subsequent application. (§ 13-24-407(a)(1)) • Additional $200 one time fee for each new applicant. (§ 13-24-407(a)(1))	• $100 annually for collocation of a small cell on authority-owned pole (§ 13-24-407(a)(2))
Texas	SB 1004[12]	• $500 per application covering up to five nodes, $250 for each additional node, and $1000 per application for each pole. (§ 284.156(b)(2)).	• $250 per node installed in jurisdiction's ROW. (284.053) • $20 per collocation on an authority-owned pole. (§ 284.056).

[7] *See* Minn. Stat 237.163 (2017), available at: https://www.revisor.mn.gov/statutes/cite/237.163.

[8] See North Carolina Session Law 2017-159 (July 21, 2017), available at: https://www.ncleg.net/Sessions/2017/Bills/House/PDF/H310v7.pdf.

[9] See Senate Bill 331 (Mar. 21, 2017), available at: http://search-prod.lis.state.oh.us/solarapi/v1/general_assembly_131/bills/sb331/EN/05?format=pdf.

[10] See Rhode Island House Bill 5224 (Sept. 27, 2017), available at: https://legiscan.com/RI/text/H5224/2017.

[11] *See* Tennessee House Bill 2279 (May 4, 2018), available at: https://legiscan.com/TN/text/HB2279/2017.

[12] *See* Texas Senate Bill 1004 (June 9, 2017), available at: https://legiscan.com/TX/text/SB1004/2017v.

Utah	SB 189[13]	• Application fee of $100 for collocation of a small cell facility on an existing or replacement pole, per small cell facility. (§ 22) • $250-$1000 for each application to install or replace a utility pole associated with a small cell depending on nature of use. (§ 22)	• $250 annually for each small cell in ROW. (§ 21) • $50 per year per small cell collocation on an authority-owned pole. (§ 23)
Virginia	SB 1282[14]	• $100 each for up to five small cell facilities on a permit application, $50 each subsequent small cell application. (§ 15.2-2316.4(B)(2)) • $250 permit processing fee for applications to install small cell facility on existing structures in ROW.	• N/A (not applicable, left unaddressed, or addressed with no specific monetary limit)

As the Commission can see, application processing fees tend to range between $50-$100 per small cell facility, and $750-$1000 for new poles. Likewise, annual recurring fees for use of the ROW or collocation on authority-owned poles generally range between $50-$250. Uniti Fiber believes that these rates are reasonable and well-considered. The FCC should preempt any and all state and/or locally imposed fees of more than $200 per small cell permit application (with no exception for a single large fee to cover "up to" a certain number of batched applications), $1000 per new or replacement pole application, and $300 per year per small cell installed on an authority-owned pole *or* otherwise installed in the locality's ROW as a barrier to the deployment of telecommunications services under Section 253 of the Act. At a minimum, any such fees that exceed those thresholds should be deemed presumptively unreasonable by the Commission. Fees above these thresholds have the effect of prohibiting the ability of companies like Uniti Fiber from providing telecommunications services and network. The FCC should also prohibit any other fees, besides those specifically enumerated by the Commission, with respect to the placement of small cell facilities within public rights of way.

- **Application Review Timeframes**. The FCC has recently sought comment on whether to shorten Section 332 timelines (*i.e.*, 150/90/60-day timelines for new builds/substantial modification/non-substantial modifications, respectively). The existing FCC timelines for Section 332 were adopted nearly ten years ago, and Uniti Fiber respectfully submits they are no longer appropriate when considering the scale and scope of today's wireless broadband buildout. By adopting a 90-day timeline for new wireless sites and a 60-day

[13] *See* Utah Senate Bill 189 (Mar. 19, 2018), available at: https://le.utah.gov/~2018/bills/sbillenr/SB0189.pdf.

[14] *See* Virginia SB 1282 (Apr. 26, 2017), available at: https://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0835+pdf.

timeline for all collocations, the Commission would take great strides towards reducing confusion and reflecting today's changing infrastructure landscape. Many states and localities across the country have already adopted similar, and even shorter, timelines.

- **Small Cell Siting on Authority Poles and in Rights-of-Way/Undergrounding**. Uniti Fiber believes that a locality's role in the permitting process should be respected and that public safety concerns should be considered. The language in Article 9 addresses both issues by striking a reasonable balance between promoting small cell wireless broadband deployment and respecting the rights of localities to reject applications in specifically identified situations. Uniti Fiber's experience with undergrounding ordinances, where they exist, are that these provisions often serve as barriers to deployment, and, in some cases, are violative of federal law. As such, Uniti Fiber is concerned about local ordinances and state laws that would apply undergrounding requirements to wireless facility deployments, including the fiber and power facilities that are necessary for the deployment of wireless broadband infrastructure. The FCC should proactively preempt such provisions under Section 253 of the Act as impermissible barriers to broadband deployment.

- **Fall Zones/Minimum Separation Distances**. Article 9 includes language that expressly permits localities to establish setback distances, and it limits the siting of small cell facilities in a way that creates public safety concerns. Uniti Fiber supports the right of localities to address "fall zones" by including reasonable separation requirements for public health and safety reasons. Of greater concern, however, are those ordinances and laws that broadly require wireless facilities to be placed apart to certain specified distances, including from competing provider's facilities. These requirements: (1) effectively block efficient network design; (2) impose arbitrary limits on where sites can be built; (3) unlawfully intrude on a provider's rights under the Communications Act to deploy and operate radio facilities; and (4) discriminate against new providers because the first provider in a locality can deploy sites anywhere subject to the locality's site separation rules, but subsequent providers will by definition be constrained--not only by those rules but by where incumbent providers built their sites, making the deployment by a second entrant far more difficult, if not impractical. As such, these provisions also violate Sections 253 and 332 of the Act and should be preempted by the Commission as an impermissible barrier to broadband deployment and competition policy.

- **Batched Applications.** Uniti Fiber understands the concerns regarding "batched" or "bundled" applications for small cell deployment and some municipalities' desire to limit the size of consolidated applications. While various states have established different approaches regarding the number of applications that may be "batched" together, with some adopting specific limits (*e.g.*, 15, 25, 30, or even 35), while others allow batching without a defined limit, Uniti Fiber supports allowing up to 35 batched applications as a means of streamlining the permitting process and speeding wireless broadband deployment. The FCC should encourage the use of batched applications as a means of speeding broadband deployment and making the local permitting process more efficient.

Uniti Fiber looks forward to continuing to work with the Commission on these matters. Please do not hesitate to contact the undersigned should you have any questions.

Sincerely,

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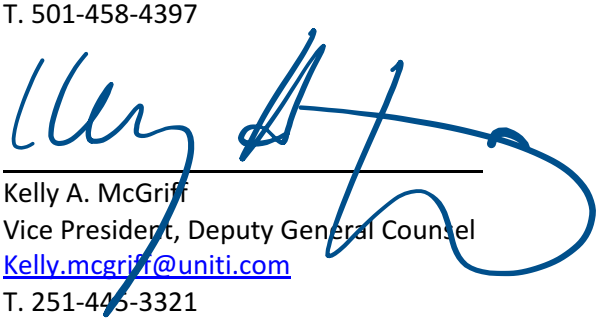

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Enclosure

Attachment 1

Article 9 of the State Model Code

ARTICLE 9: DEPLOYMENT OF COMMUNICATIONS NETWORK FACILITIES

1. Deployment of Communications Network Facilities and Communications Network Support Structures Generally

1.1. Except as provided in this Article or Article 4, an Authority may not prohibit, effectively prohibit, regulate, or charge for the construction or Collocation of Communications Network Facilities and Communications Network Support Structures, whether through any Law or practice.

1.1.1. An Authority may not institute, either expressly or de facto, a moratorium on (1) filing, receiving or processing Applications or (2) issuing Permits or other approvals for a Communications Network Facility or a Communications Network Support Structure.

1.2. An Authority may require an Application process in accordance with this subsection, and Permit and/or other fees in accordance with Article 9.3. An Authority shall accept Applications for Permits and shall process and issue Permits subject to the following requirements, but may not directly or indirectly require an Applicant to perform services unrelated to the Communications Network Facility or Communications Network Support Structure for which approval is sought, such as in-kind contributions, including but not limited to reserving Fiber, Conduit or pole space for the Authority.

1.3. An Applicant may not be required to provide more information to obtain a Permit than is necessary to demonstrate the Applicant's compliance with this section, nor may an Authority require an Applicant to provide more information than is necessary to demonstrate the Applicant's compliance with Applicable Codes for the placement of Communications Network Facilities in the locations identified in the Application. An Authority may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, Authority liability, or Authority warranties. Such provisions must be reasonable and nondiscriminatory and set forth in writing. An Authority may not limit the placement of Communications Network Facilities or Communications Network Support Structures by minimum separation distances.

1.4. An Applicant's business decision on the type and location of Communications Network Facilities, Communications Network Support Structures, Utility Poles, or technology to be used, is presumed

to be reasonable. This presumption does not apply with respect to the height of Communications Network Facilities, Communications Network Support Structures or Utility Poles. An Authority may consider the height of such structures in its zoning review, provided that it may not unreasonably discriminate between the Applicant and other Communications Providers.

1.5. An Authority shall not

1.5.1. Require an Applicant to submit information about, or evaluate, an Applicant's business decisions with respect to (1) the need for the Communications Network Support Structure, Utility Pole, or Communications Network Facility or (2) its service, customer demand for service, or quality of service;

1.5.2. Require the removal of existing Communications Network Support Structures or Communications Network Facilities as a condition to approval of an Application for a new Communications Network Facility or Communications Network Support Structure unless such existing Communications Network Support Structure or Communications Network Facility is abandoned and owned by the Applicant; or

1.5.3. Require the applicant to place an Antenna or other Communications Network equipment on publicly owned land or on a publicly or privately owned water tank, building, or electric transmission tower as an alternative to the location proposed by the applicant.

1.6. Any requirements regarding the appearance of Communications Network Facilities or Communications Network Support Structure, including those relating to materials used or arranging, screening, or landscaping must be reasonable.

1.7. Any setback or fall zone requirements must be substantially similar to such a requirement that is imposed on other types of commercial structures of a similar height.

1.8. Application Timeframes:

1.8.1. Within 30 days after receiving an Application, an Authority must determine and notify the Applicant by electronic mail as to whether the Application is complete. If an Application is deemed incomplete, the Authority must specifically identify the missing information within that same 30-day period. An Application is

deemed complete if the Authority fails to provide notification to the Applicant within 30 days.

1.8.2. An Application must be processed on a nondiscriminatory basis. An Authority must approve or deny an Application within 60 days after the date the Authority receives a complete Application to construct a new or make a Substantial Modification to a Communications Network Support Structure or a complete Application for a Communications Network Facility. A complete Application is deemed approved if an Authority fails to approve or deny the Application within 60 days after receipt of the Application. If an Authority has review procedures beyond review and action on an Application, those procedures must also be completed within 60 days. Applicant shall provide notice to the Authority within seven days of beginning Construction or Collocation pursuant to a Permit issued pursuant to a deemed approved Application, and such notice shall not be construed as an additional opportunity for objection by the Authority or other entity to the deployment. Construction or Collocation pursuant to a Permit issued pursuant to an approved or deemed approved Application, Construction or Collocation shall commence within two years of such approval, which period may be extended by the Authority, and shall be pursued to completion. Any time limitation placed on Permits shall be void unless the Applicant subsequently and voluntarily requests that the Permit be terminated. Applicant shall provide notice to the Authority upon completion of Construction or Collocation of the permitted Communications Network Support Structure or Communications Network Facility.

1.8.3. An Authority must notify the Applicant of approval or denial by [the mode of transmission of the Applicant's choosing (?)] electronic mail. If the Application is denied, the Authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the Applicant by electronic mail on the day the Authority denies the Application. The timeline for sending such documentation may be extended for up to five business days as necessary and as requested by the Authority. In response to a denial, an Applicant may cure the deficiencies identified by the Authority and resubmit the Application within 30 days after notice of the denial is sent to the Applicant without paying an additional Application fee. The Authority shall approve or deny the resubmitted Application within 30 days after receipt or the

Application is deemed approved. Any subsequent review of the resubmitted Application shall be limited to the deficiencies cited in the denial.

1.9. Applicants may consolidate Applications where the Applications are sufficiently similar in nature and scope.

1.10. An Applicant may, at its discretion, seek authorization for a specific geographic area as described below.

1.10.1. A Permit issued pursuant to this subsection by the Authority shall be applicable to a geographic area that is no smaller than –

(1) An area that is coextensive with the geographic area within the boundaries of the Authority's jurisdiction; or

(2) An area that is within the boundaries of the Authority's jurisdiction and contains no fewer than –

(a) 20,000 households, or

(b) 300 route miles of underground installation.

1.11. A Communications Network Support Structure granted a Permit and installed pursuant to this subsection shall comply with federal regulations pertaining to airport airspace protections.

1.12. An Authority shall not require a Communications Provider to indemnify and hold the Authority and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses or fees, except when a court of competent jurisdiction has found that the negligence of the Communications Provider while installing, repairing or maintaining caused the harm that created such claims, lawsuits, judgments, costs, liens, losses, expenses, or fees, or to require a Communications Provider to obtain insurance naming the Authority or its officers and employees an additional insured against any of the foregoing.

1.13. The Authority, in the exercise of its administration and regulation related to the management of the Public Right-of-Way must be competitively neutral with regard to other users of the Public Right-of-Way, including that terms may not be unreasonable or discriminatory and may not violate any applicable Law.

2. **Additional Procedures for Deployment of Small Wireless Facilities**

2.1. The siting, mounting, placement, construction, modification and operation of a Small Wireless Facility is a permitted use by right in any zone and not subject to zoning review or approval.

2.2. A Communications Provider has the right to locate or Collocate Small Wireless Facilities on an Authority Pole, and/or other Authority-owned poles and other property in the Public Right-of-Way, except that such facilities or networks shall not be located or mounted on any apparatus, pole or signal with tolling collection or enforcement equipment attached. In addition, an Authority may deny a proposed Collocation of a Small Wireless Facility in the Public Right-of-Way if the proposed Collocation:

2.2.1. Materially interferes with the safe operation of traffic control equipment;

2.2.2. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;

2.2.3. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or State standards regarding pedestrian access or movement; and/or

2.2.4. Materially fails to comply with applicable State authority.

2.3. An Authority may not require the placement of Small Wireless Facilities on any specific Utility Pole or category of poles or require multiple Antenna systems on a single Utility Pole. An Authority may not enter into an exclusive arrangement with any Person for the right to attach equipment to Authority Poles.

2.4. Notwithstanding the general prohibition on separation distances in this Article, within 14 days after the date of filing the Application for the construction, placement, or use of a Small Wireless Facility and the associated Wireless Support Structure at a location where a Wireless Support Structure or Utility Pole does not exist, an Authority may propose, as an alternative location for the proposed Small Wireless Facility, that the Small Wireless Facility be Collocated on an existing Utility Pole or on an existing Wireless Support Structure, if the existing Utility Pole or the existing Wireless Support Structure is located within 50 feet of the location proposed in the Application. The Applicant shall use the alternative location proposed by the Authority if: (A) the Applicant's right to use the alternative location is subject to reasonable

terms and conditions; and (B) the alternative location will not result in technical limitations or additional costs, as determined by the Applicant. The Applicant must notify the Authority within 30 days of the date of the request whether the Applicant will use the alternative location. If the Applicant notifies the Authority that it will use the alternative location, the Application shall be deemed granted for that alternative location and all other locations in the Application. If the Applicant will not use the alternative location, the Authority must grant or deny the original Application within 60 days after the date the Application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

2.5. An Authority shall permit the Collocation of a Small Wireless Facility which extends no more than 10 feet above the Utility Pole or structure upon which the Facility is to be Collocated. An Authority shall permit the installation of a new pole or support structure to hold facilities that is no taller than 10 feet above the tallest existing Utility Pole as of the effective date of this Act, located in the same Public Right-of-Way, other than a Utility Pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the Small Wireless Facility. If there is no Utility Pole within 500 feet, the Authority shall permit without restriction the installation of a pole that is no taller than 50 feet. An Authority may approve Small Wireless Facilities or new poles that do not meet the height limits of this section subject to reasonable restrictions.

2.6. An Applicant seeking to construct or Collocate Small Wireless Facilities within the jurisdiction of a single Authority may, at the Applicant's discretion, file a consolidated Application and receive a single Permit for the Collocation of up to 25 Small Wireless Facilities. If the Application includes multiple Small Wireless Facilities, an Authority may separately address individual Small Wireless Facility Collocations for which incomplete information has been received or which are denied.

2.7. Collocation of a Small Wireless Facility on an Authority Pole does not provide the basis for the imposition of an ad valorem tax on the pole.

2.8. An Authority may reserve space on Authority Poles for future public safety uses. However, a reservation of space may not preclude Collocation of a Small Wireless Facility. If replacement of the pole is necessary to accommodate the Collocation of the Facility and the future public safety use, the pole replacement is subject to Make-Ready

provisions and the replaced pole shall accommodate the future public safety use.

2.9. An Authority may require an Application under this section for the installation of new, replacement or modified Utility Poles associated with the Collocation of Small Wireless Facilities. An Authority shall approve an Application unless the Authority finds that the Utility Pole fails to comply with local code provisions or regulations that concern any of the following:

2.9.1. public safety;

2.9.2. objective design standards and reasonable stealth and concealment requirements that are consistent and set forth in writing, provided that such design standards may be waived by the Authority upon a showing that the design standards are not reasonably compatible for the particular location of a Small Wireless Facility or that the design standards impose an excessive expense.

2.10. Application requirements, processes, timeframes and remedies for Small Wireless Facilities. All requirements, procedures, timeframes and remedies set forth in Article 9.1 shall apply to Applications for Small Wireless Facilities, except that the period within which an Authority must approve or deny an Application is 60 days for all Small Wireless Facilities. A complete Application is deemed approved if an Authority fails to approve or deny the Application within 60 days after receipt of the Application.

3. **Permitting Fees**

3.1. General requirements for fees. An Authority may charge an Application fee or other fee only if such fee is required for similar types of commercial development within the Authority's jurisdiction. Any Application fee or other fee an Authority may charge for reviewing and acting on Applications and issuing Permits for Communications Network Facilities or Communications Network Support Structures shall be based solely on the actual, direct and reasonable costs to process and review such Applications and managing the Public Right-of-Way. Such fees shall be reasonably related in time to the incurring of such costs. Any such fees shall also be nondiscriminatory, shall be competitively neutral, and shall be publicly disclosed. Fees paid by an Authority for (1) travel expenses incurred by a third-party in its review of an Application, (2) direct payment or reimbursement of third-party rates or fees charged on a contingency basis or a result-based

arrangement, or (3) fees paid to the Manager, shall not be included in the Authority's actual, direct and reasonable costs. In any dispute concerning the appropriateness of a fee, the Authority has the burden of proving that the fee meets the requirements of this subsection.

3.2. No rate or fee may: (1) result in a double recovery where existing rates, fees or taxes already recover the direct and actual costs of reviewing Applications, issuing Permits, and managing the Public Right-of-Way; (2) be in the form of a franchise or other fee based on revenue or customer counts; (3) be unreasonable or discriminatory; or (4) violate any applicable Law. Notwithstanding the foregoing, in recognition of the public benefits of the deployment of Communications Services, an Authority is permitted, on a nondiscriminatory basis, to refrain from charging any rate or fee to a Communications Provider for the use of the Public Right-of-Way.

3.3. The [State Legislature] or its appropriate designee shall promulgate rules governing the collection of Permit fees by Authorities, including caps on fees described in this section.

3.4. Application fees, where permitted, for Applications processed pursuant to Article 9.1 shall not exceed the lesser of the amount charged by the Authority for: (i) a building permit for any similar commercial construction, activity, or land use development; or (ii) $ ___ [fee cap to be inserted pursuant to section 3.3].

3.5. Fees for Small Wireless Facilities. Application fees, where permitted, for Applications processed pursuant to Article 9.2 shall not exceed the lesser of (1) the actual, direct, and reasonable costs to process and review Applications for such Facilities; (2) the amount charged by the city for permitting of any similar activity; or (iii) $___ per Facility for the first five facilities addressed in an Application, plus $___ for each additional Facility addressed in the Application [fee caps to be inserted pursuant to section 3.3].

3.6. Authority Poles. Any annual or other recurring fee an Authority may charge for attaching a Communications Network Facility on an Authority Pole shall not exceed the rate computed pursuant to rules adopted by FCC rules for telecommunications pole Attachments if the rate were regulated by the FCC or $___ per year per Authority Pole, whichever is less. An Authority may not require any Application or approval, or assess fees or other charges for:

3.6.1. routine maintenance;

3.6.2. replacement of existing Communications Network Support Structures with Communications Network Support Structures that are substantially similar or of the same or smaller size.

3.6.3. installation, placement, maintenance, or replacement of Micro Wireless Facilities that are suspended on cables strung between existing Utility Poles in compliance with Applicable Codes by or for a Communications Provider authorized to occupy the Public Rights-of-Way. Notwithstanding this paragraph, an Authority may require a right-of-way Permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane.

4. **Exclusive Agreements Prohibited.**

No agreement pursuant to this section shall provide any Applicant with an exclusive right to access the Public Right-of-Way or other Infrastructure.

5. **Transition Period**

5.1. Agreements between Authorities and Communications Providers that are in effect on the effective date of this Act remain in effect for Facilities already subject to the Agreements, and subject to applicable termination provisions. The Communications Provider may accept the rates, fees, and terms established under this subsection that are the subject of an Application submitted after the rates, fees, and terms become effective.

5.2. An Authority and Persons owning or controlling Authority Poles and Utility Poles shall offer rates, fees, and other terms that comply with this section no later than three months after the enactment of this Act. No later than that date, an Authority shall also rescind or otherwise terminate any ordinances, regulations or procedures that prohibit or have the effect of prohibiting the construction or installation of Communications Network Facilities or Communications Network Support Structures.

6. **Historic Preservation**

This subsection does not limit an Authority's jurisdiction to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for Facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement such Laws. An Authority may enforce local codes, administrative rules, or regulations adopted by ordinance in effect on April 1, 2017, which are applicable to a historic area designated by the relevant Authority. An Authority may enforce

pending local ordinances, administrative rules, or regulations applicable to a historic area designated by the Authority if the intent to adopt such changes has been publicly declared on or before April 1, 2017. An Authority may waive any ordinances or other requirements that are subject to this paragraph.

7. **Privately-owned Structures**

This subsection does not authorize a Person to Collocate or attach Communications Network Facilities on a privately owned Utility Pole, a privately owned Communications Network Facility Support Structure, or other private property without the consent of the property owner.

8. **State and Local Authority**

8.1. Subject to the provisions of this Model Code and applicable federal Law, an Authority may continue to exercise zoning, land use, planning and permitting authority within its territorial boundaries, including with respect to Communications Network Support Structures and Utility Poles; except that no Authority shall have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of any Communications Network Facility located in an interior structure or upon the site of any campus, stadium, or athletic facility not otherwise owned or controlled by the Authority, other than to comply with Applicable Codes. Nothing in this Model Code authorizes an Authority, to require Communications Network Facility deployment or to regulate Communications Services.

8.2. Any Communications Provider shall have the right pursuant to this Model Code to construct, maintain and operate poles, Conduit, cable, switches and related Facilities along, across, upon, and under any Public Right-of-Way in this state. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

8.3. Nothing in this Model Code shall be interpreted as granting a Communications Provider the authority to construct, maintain or operate any Facility on property owned by an Authority outside of the Public Right-of-Way.

8.4. Subject to the provisions of this Article, the Authority shall have the authority to prohibit the use or occupation of a specific portion of Public Right-of-Way by a Communications Provider due to a reasonable public interest necessitated by public health, safety, and welfare so long as the authority is exercised in a competitively neutral manner and is not unreasonable or discriminatory. A reasonable public interest shall include the following:

8.4.1. the prohibition is based upon a recommendation of the Authority engineer, is related to public health, safety and welfare and is nondiscriminatory among Communications Providers, including incumbent Communications Providers;

8.4.2. the Communications Provider has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the Authority for requiring an alternate method or alternate route that will result in neither unreasonable additional installation expense nor a diminution of service quality;

8.4.3. the Authority reasonably determines, after affording the Communications Provider reasonable notice and an opportunity to be heard, that a denial is necessary to protect the public health and safety and is imposed on a competitively neutral and nondiscriminatory basis; or

8.4.4. the specific portion of the Public Right-of-Way for which the Communications Provider seeks use and occupancy is environmentally sensitive as defined by Law or lies within a previously designated historic district as defined by any Law, and the proposed facility is not otherwise excluded from review under any Law.

8.4.5. Pre-existing presence of another Utility or Communications Network Facility or Communications Network Support Structure in the Public Right-of-Way is per se evidence of an absence of a reasonable basis for excluding other Utility providers' or Communications Providers' access to the same Public Right-of-Way.

9. Dispute Resolution

The [name (1) relevant Authority with authority over utilities, (2) binding arbitration, or (3) court of competent jurisdiction, to be determined on a State-by-State basis] shall have jurisdiction to determine all disputes arising under this Article 9. Unless agreed otherwise and pending resolution of a Public Right-of-Way access rate dispute, the Authority controlling access to and use of the Public Right-of-Way shall allow the placement of a Communications Network Facility or Communications Network Facility Support Structure at a temporary rate of one-half of Authority-proposed annual rates or $20, whichever is less, with rates to be trued up upon final resolution of the dispute. Pending resolution of a dispute concerning rates for Collocation of Communications Network Facilities on Authority Poles or Utility Poles, the Person owning or controlling the pole shall allow the collocating Person to Collocate on its poles at annual rates of no more than $20 per year per Authority

Pole, with rates to be trued up upon final resolution of the dispute. Complaints shall be resolved no later than 180 days after a complaint or petition is filed.